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tive justice to mere matters of practice. It is also worth considering whether the time has not come when some of the presumptions of our law should not be resolved in favor of the community rather than in favor of the criminal, and whether we should not act more upon the principle that the primary purpose of a system of criminal justice is to protect the innocent members of society rather than the criminal class. Our present methods had their origin in an age when the number of capital crimes was appallingly large and when offenders were disproportionately punished for minor offenses. To make it difficult to punish persons charged with crime in such an age a procedure was developed which provided every possible loophole of escape for the accused. The old severity of penal legislation, however, has long ago been abolished, yet the old methods of procedure, with all the safeguards which they threw around the criminal, are still retained. They are totally inapplicable to present conditions, and in the interest of real justice as well as social security, they ought to be modified as they have been in England where they originated. Our duty in the premises was well stated by President Roosevelt in a letter to Governor Durbin, of Indiana, in August, 1903. He said: "The best and immediate efforts of all legislators, judges and citizens should be addressed to securing such reforms in our legal procedure as to leave no vestige of excuse for those misguided men who undertake to reap vengeance through violent methods. We must show that the law is adequate to deal with crime by freeing it from every vestige of technicality or delay."

LEGISLATIVE TENDENCIES AS TO CAPITAL PUNISHMENT

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Public sentiment in regard to the infliction of the death penalty in the United States shows itself both in the enactment of law and in the violation of law. In the violation of law it takes the form of lynching. It is not my purpose to speak of the lawless use of capital punishment. Two governors of southern states, Governor Jelks, of Alabama, and Governor Aycock, of North Carolina, in 1903 pointed out to their respective legislatures that lynching instead of furnishing any social protection actually becomes a great moral danger; for it leads to the taking of the life of innocent people. Mob murder is not justified by statute but little has been done by statute to prevent it. Two things are important to note in regard to it: First, that lynching does not occur in the states that have abolished capital punishment—Michigan, Rhode Island, Wisconsin, Maine. In no states is the respect for human life held more sacred by the people than in those states where it is held most sacred by the law. Secondly, as was said by Governor Aycock, of North Carolina, "the crimes for which this summary punishment is meted out do not decrease."

Setting aside these lawless hysterical spectacles of torture, the result of mob vengeance, which constitute a terrible reproach to the civilization of our country, what are the cooler, saner tendencies of modern legislation concerning the death penalty?

1. With a single exception, the states of the Union which have abolished the death penalty show no disposition to restore it. Michigan abolished the death penalty in 1847, Rhode Island in 1852, Wisconsin in 1853, Maine abolished it in 1876, restored it in 1883, and again abolished it in 1887. Thus in Michigan it has been abolished for sixty years, and in two other states for more than fifty years. During that time the conditions of civilization have been much modified in Michigan and Wisconsin, passing as they have done from the ruder conditions of frontier communities and development into states of great power and influence. Without invoking statistics as to the influence of the abolition of the death penalty upon crime, a subject outside of the special range of this article, it is sufficient to point out that these states have discovered no reason for repealing the laws which have been in existence for more than half a century. Colorado is the only state in which the death penalty has been restored. It was abolished in 1897, but as the result of a lynching outbreak in 1900, was restored in 1901, but under the amended law the jury fixes the penalty for murder as death or life imprisonment.

2. A marked tendency in the United States is toward the abolition of public executions. Publicity was formerly regarded of the greatest importance. It gave an exemplary character to the punishment. Even after death the body of the criminal was exposed on the gibbet for weeks as a warning to malefactors. This feature, once considered important and necessary, is now regarded as more harmful to society than healthful. The practice of gibbeting the criminal has long since been abandoned; the practice of public executions is gradually following it. As the result of a dramatic exploitation by the sheriff of Boston, of a criminal executed in the Charles Street Jail, which was turned into a vast theatre to see the execution, the people of that state, protesting against this form of legal vaudeville, enacted that all executions should be private.

Since 1903 several states have enacted laws providing that persons convicted of offences punishable with death should be executed in the state penitentiary or under conditions of comparative privacy. New Mexico enacted that execution should take place within an enclosure before not over twenty persons. North Dakota passed a similar law. Governor Chamberlain, of Georgia, recommended that all executions should take place in the penitentiary, out of hearing and out of sight of all except officials, and such a law was passed.

Arkansas, in 1906, decided that executions should take place in the county in which the crime was committed, and also amended its law so that executions of persons convicted of rape are not to be public.

The argument for public executions at the state penitentiary was presented by Governor Beckham, of Kentucky, in his message to the legislature in 1906: "I recommend that you provide that all executions of the death penalty be done in the Frankfort Penitentiary. The hanging of a man in the community where he is tried produces a sensation, a nervousness and excitement upon the part of the people, and it has a brutalizing effect upon the large numbers, in spite of the law, who witness it."

3. Still another tendency of American legislation is to substitute the

electric chair for the gallows. This was introduced first in New York and has been followed in Massachusetts, Ohio, New Jersey, and a bill to this effect is before the legislature of Minnesota. The adoption of this form of the death penalty which, for want of a better word, we seem forced to call "electrocution," is urged on the ground that it is instantaneous and therefore more merciful and is less spectacular than the gallows. It takes but small space and therefore permits more easily private execution. Other prisoners are not disturbed or excited by the erection of the gallows. All of these arguments, it will be seen, are in the direction of softening and mitigating the harsher features of the death penalty by relieving it of all aspects of physical torture, and by removing its exemplary character. Opponents of this change have pointed out that when all these aspects of capital punishment are removed there is very little left of moral value in the punishment. But this argument has not prevented the substitution of electrocution for hanging.

4. A fourth tendency in modern legislation is to reduce the number of capital crimes. To illustrate this it is not necessary to go back a hundred years when, under English law, 200 offenses were included in the list of capital crimes. More remarkable does it appear that until 1894, under the Federal laws of the United States, twenty-five offenses for which the penalty was death were catalogued under the military code; twenty-two under the naval code; under the extra-territorial jurisdiction granted to consuls by section 4192 Revised Statutes, three offenses, viz.: Insurrection, rebellion and murder, and under the jurisdiction of the civil code of the United States there were no less than seventeen, namely:

(1) Murder; (2) Murder upon the high seas; (3) Maliciously striking, etc., from which death results; (4) Rape; (5) Owner destroying vessel at sea; (7) Piracy; (8) Seaman laying violent hands on his commander; (9) Robbery upon the high seas; (10) Robbery on shore by crew of piratical vessels; (11) Any act of hostility against the United States, or any citizen thereof, on the high seas, under color of commission from a foreign state, or on pretense of such authority; (12) Piracy by subjects or citizens of foreign states; (13) Piracy in confining or detaining negroes on board vessels; (14) Piracy in landing, seizing, etc., negroes on foreign shore; (15) Arson of dwelling-house within a fort, etc.; (16) Arson of vessel of war; (17) Treason.

Through agitation, brought about by General Newton M. Curtis, in the Fifty-second Congress, in 1892, the number of offences was reduced to three.

The special joint committee on the revision of the laws reporting to the Fifty-ninth Congress just closed a bill to revise, codify, and amend the penal laws of the United States, say in their report: "We have abolished the punishment of death in all except three cases—treason, murder, and rape—and have provided that even in these cases it may be modified to imprisonment for life; and as humane judges in England avail themselves of the most technical irregularities in pleadings and proceedings as an excuse for discharging prisoners from the cruel rigors of the common law, so jurors here often refuse to convict for offenses attended with extenuating circumstances rather

than submit the offender to what in their judgment is the cruel requirement of a law demanding a minimum punishment."

5. Finally, the culmination of modern legislative tendencies, with reference to the death penalty, is seen in the abolition of the death penalty altogether.

Governor Savage, of Nebraska, in 1903, urged the legislature to "place Nebraska among the states representing the highest types of civilization, and the teachings of the meek and lowly Nazarene" by abolishing capital punishment.

In the same year, New Hampshire abolished the death penalty for murder in the first degree unless the jury affix the same to the verdict; otherwise the sentence is for life imprisonment.

During the past winter the most conspicuous center of legislative discussion on this subject has been the French parliament. In its session of November 5, 1906, the Chamber of Deputies referred a bill for the abolition of the death penalty to a committee on judicial reforms. This committee, by a small majority, voted in favor of the abolition of the penalty; but the substitute offered for the guillotine—perpetual imprisonment, six years of it in solitary confinement—has raised many objections. At last accounts no final action had been taken. The argument for the abolition of the death penalty, accompanying the bill which was presented by Monsieur Guyot-Dessaigne, Minister of Justice, is a very effective and telling presentation of the case.

That the death penalty is not a living question in some of the other parliaments of the world is because they have actually abolished it and do not desire to restore it. Thus Russia was one of the first countries to respond to the appeal of Beccaria, abolishing it in 1753, except for political offenses. It was abolished in Portugal in 1867, in Holland in 1870, in Italy in 1889; in the majority of the Swiss cantons; in Costa Rica, Brazil, Ecuador, Guatemala, and Venezuela. It is to be further noticed that some countries which have not formally abolished it by legislative act have, in fact, suppressed it in practice. This is true of Belgium and also of the State of Kansas.

Apropos of the discussion of the death penalty the history of the recent treatment of prisoners condemned to execution in Kansas is interesting:

In 1872 the Kansas legislature provided a peculiar penalty for murder in the first degree. It provided that one convicted of this crime should be condemned to death, but that he should be incarcerated in the penitentiary for one year before his execution, and then his execution should take place only upon the order of the executive. No governor has ever exercised this discretion by ordering the execution of any prisoner sentenced under this law hence there have been no official hangings in this state since that time.

The recent legislature, which adjourned a few weeks ago, amended this law making the punishment for murder in the first degree imprisonment for life. There are some fifty or more prisoners in the penitentiary who come under the provisions of this law.—(EDITOR.)